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12/06/2016

Anderson, Diane

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 09-0688

From: Tara Barthel <tara@tarabarthel.com>
Sent: Tuesday, December 6, 2016 11:31 AM
To: Court, SCclerk
Subject: Public Comment on Proposed Rule 8.4(g)

December 6, 2016

Clerk of Montana Supreme Court
PO Box 203003
Helena, MT 59620-3003

FILED

DEC 06 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Re: Professional Rules of Conduct - Rule 8.4

Dear Honorable Members of the Court:

I am writing to respectfully submit my public comment on your proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. As a (currently voluntarily inactive) member of the Illinois Bar who has lived in Montana since 1999, and as someone who has a personal family relationship with Jim Obergefell (and many other members of the GLBTQ community), I have read and thought carefully about this issue ever since I was the president of the Christian Legal Society University of Illinois College of Law chapter in 1994 and our campus standing was temporarily challenged based on LGBTQ rights questions.

Our group's standing was ultimately upheld according to freedom of speech and freedom of religion—and these are the grounds upon which I strongly urge you to reject the expansive reach of the new proposed Rule 8.4(g).

In addition, I urge you to please not overstep and act as a legislative body—"saying what the law should be, not what it is" (to paraphrase Chief Justice Roberts in his dissent to *Obergefell*, Justices Scalia and Thomas joining):

"Petitioners make strong arguments rooted in social policy and considerations of fairness. They contend that same-sex couples should be allowed to affirm their love and commitment through marriage, just like opposite-sex couples. That position has undeniable appeal ... **But this Court is not a legislature.** Whether same-sex marriage is a good idea should be of no concern to us. **Under the Constitution, judges have power to say what the law is, not what it should be.** The people who ratified the Constitution authorized courts to exercise "neither force nor will but merely judgment." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered)."

Thank you for your time and consideration. Our family is grateful for your service to our state.

Yours sincerely,

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